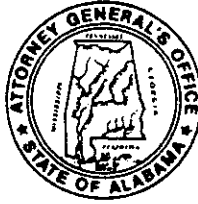


82-00141

OFFICE OF THE ATTORNEY GENERAL



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STATE OF ALABAMA

JAN 19 1982

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Sheriff Melvin Bailey
Jefferson County Sheriff's
Department
Jefferson County Courthouse
Birmingham, Alabama

Sheriffs - Firearms - Licenses and
Permits

A conviction of theft of property
is a crime of violence if the facts
of the case are substantially
identical to the elements of common
law larceny.

Dear Sheriff Bailey:

The Attorney General is in receipt of your request for an
opinion dated December 16, 1981 in which you pose two
questions. The questions are:

1. Is a conviction of theft of property a conviction of a
crime of violence as defined in Section 13A-11-70, Code?
2. If the answer to the above question is affirmative
what is the affect if any of a conviction of embezzlement
or false pretense prior to the effective date of the
Alabama Criminal Code insofar as the prohibitions
contained in §§13A-11-72 and 13A-11-70, Code or concern?

It is the opinion of the Attorney General that a
conviction of theft as defined in Section 13A-8-1, et seq., is
a disqualifying crime if the particular facts of the individual
case are substantially identical to the elements of those

crimes defined as a crime of violence. If, for example, the particular facts of a crime, which is charged under the new Criminal Code as theft of property are substantially identical to the common law elements of the crime of larceny then upon a conviction of theft of property the person would be disqualified from possessing a pistol.

Question number two poses the question of what effect a conviction of embezzlement or false pretenses prior to the effective date of the new criminal code would have upon the prohibitions in §§13A-11-72 and 13A-11-70. If a person was convicted of the crime of embezzlement or false pretenses, §§13-6-150 and 13-6-152 would not bar that person from obtaining a pistol permit. Section 13-6-150 carries over to the new criminal code the same definition of crime of violence. Section 13A-11-72 carries the same standard prohibiting the possession of pistols by certain persons, as does §13-6-152. Therefore, both the "old" code and the "new" code do not statutorily bar the possession of pistols by persons convicted of embezzlement or false pretenses.

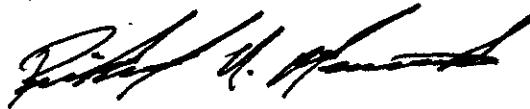
However, an important point should be made in regard to the issuance of a pistol permit. Section 13A-11-75 provides that a Sheriff may issue a pistol permit upon certain conditions. An important condition is that the Sheriff must determine that the person applying for the permit is a suitable person to be so licensed. In Hess v. Butler, 379 So.2d 1259 (Ala. 1980) the Court held that the language in Section 13-6-155 (which is identical to Section 13A-11-75) provided the Sheriff with some measure of discretion in a determination as to whether or not an applicant for a pistol permit was a suitable person to be so licensed. The Court further held that in the absence of an arbitrary or capricious action on the part of the Sheriff the Sheriff would not be subject to mandamus. If, for example, a sheriff refused to issue a permit simply because he did not like the person or because of race, religion or national origin, the sheriff would have acted arbitrarily and would be subject to mandamus.

Sheriff Melvin Bailey
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We hope that your questions have been fully and completely answered and if we may provide you with further information, please feel free to contact this office at any time.

Sincerely yours,

CHARLES A. GRADDICK
ATTORNEY GENERAL
BY:

A handwritten signature in dark ink, appearing to read "Richard N. Meadows", written in a cursive style.

RICHARD N. MEADOWS
ASSISTANT ATTORNEY GENERAL

CAG/RNM/PM